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Executive Summary

Disrupting the Routes between Care and Custody for Girls and Women

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Introduction

This report explores the over-representation of care-experienced girls and women in the youth and criminal justice system. The majority of children in care do not come into conflict with the law (Prison Reform Trust (PRT), 2016), but a minority continue to do so, and risk being abandoned when they do (Coyne, 2015). The Laming Review highlighted the lack of research on the experiences of girls in care within the criminal justice system and recommended a particular focus on their needs (PRT, 2016; Staines, 2016). Furthermore, the Lammy Review (2017) subsequently showed how ethnic identity adds an additional layer of disadvantage for some, highlighting the need to also focus on Black and minoritised women.

The research underpinning this project aims to explore how to reduce the number of girls and women who move between the care system and prison custody. It focuses on the experiences of imprisoned women from care, as well as those of care-experienced girls and young women in the community who have had youth justice system contact. Because official views overwhelmingly focus on the deficits of individuals and their families (Fitzpatrick & Williams, 2017), there is a vital need to amplify the voices of those with lived experience of care and criminal justice to provide more nuanced and balanced understanding. Our research includes interviews with professionals who work with care-experienced women and girls, with expertise stemming from across a range of professional spheres.

Methodology

Guided by insights from feminist criminology, including reflexivity within the research process, a commitment to social change and a focus on lived experience (Burman & Gelsthorpe, 2017), this project began with a targeted, international literature review that explored messages from research and identified knowledge gaps. The topic of care-experienced girls and/or women who have justice system contact has been neglected, with only 12 empirical studies identified that had specifically explored this issue, none of which were completed in the UK. The literature review can be found [here](#), and the accompanying summary [here](#).

The literature review identified various knowledge gaps in the quantitative evidence base. This paved the way for a short data scoping exercise that further explored the limits of existing data sets, whilst making recommendations on how to improve data collection in the future, with a focus on emerging opportunities for data linkage. Our project was approved by Lancaster University's Ethics Committee, Her Majesty's Prison and Probation Service's National Research Committee and the Judicial Office. We were acutely aware of ethical practice during our work, particularly given the very sensitive nature of the topic, and sought to maintain a flexible, respectful, and non-judgemental approach throughout.

Interviews were undertaken with 37 care-experienced women from across three prisons in England between October 2019 and February 2020. Between January 2020 and March 2021, interviews were carried out with 17 care-experienced girls and young women across England who had also had youth justice involvement. Interviews were also undertaken with 40 professionals between February 2020 and February 2021, including front-line practitioners and senior policy leads from children's services, police, youth justice, probation, prisons, and the judiciary.

Documentary analysis of 36 local authority protocols aimed at preventing the unnecessary criminalisation of children in care and/or supporting looked after children in the youth justice system complemented our interview strategy. All interviews were transcribed, anonymised and inputted into NVivo 12 as were the 36 local authority protocols. The protocols and all 94 interviews were subsequently coded, in preparation for more in-depth analysis (Woolf & Silver, 2018).

Data Scoping Exercise

Our Data Scoping Exercise began with our review of international literature on the pathways between care and custody for girls and women. This identified key contextual information that is and is not available on this topic, including the numbers, demographics and histories of care-experienced girls and women in the justice system. The challenges of data collection and information sharing were also discussed with specific professional organisations. Consequently, various recommendations are set out for improving the quantitative evidence base and developing a future research agenda.

Data Recommendations

- Further exploration of how gender, ethnicity and care status interact with criminal justice involvement is required and the new MoJ/DfE data-share would enable this.
- A critical examination of police data collection on the victimisation-criminalisation overlap could help to prevent unnecessary criminalisation in care.
- Local authorities and the police must improve data collection and usage on girls' exploitation and county lines involvement.
- Transitions for care-experienced girls and women must be better understood, with government data published on transitions from the youth to adult criminal justice system.
- To improve identification of those in prison with care-experience, HMPPS should ask an 'opt out' question rather than an 'opt in' one which may be less stigmatising.
- The lack of knowledge on what happens to the children of care-experienced women who are sent to prison needs to be addressed, but with great sensitivity.
- Future data linkage could improve understanding of care-experience and system contact across the life course but must be underpinned by a strong commitment to ethical practice.

Participant Overview

The following overview sets the scene for the findings arising from the qualitative interviews which are the main focus of this project. Interviews took place with 54 care-experienced girls and women aged between 16 and 58. Nearly a third of care-experienced participants (n=17) identified their ethnicity as Black, Mixed or Other, and 37 identified as White. Placement movement in care was very common, with 32 participants experiencing three or more placements, nine of whom had experienced ten or more.

The ages of the 40 professionals in the study spanned 26 and 69. These participants came from a range of different organisations and services across England. Most identified as being White (n=37). In total, the study draws on insights from 94 interviews, including 42 interviews with those with lived experience of both care and custody.

Contextualising Overlapping Care and Justice Pathways

In contextualising overlapping care and justice pathways, trauma emerged as a key theme which was evident in pre-care experiences but could also be traced across experiences of care and criminal justice institutions.

Many participants described backgrounds of abuse, serious violence and trauma, and had multiple experiences of victimisation throughout their lives. Violence and abuse at home was the most common reason reported for entering the care system. Twenty-nine participants reported being sexually abused as a child. Of these, 12 discussed being abused whilst in care and nine discussed abuse whilst in care but outside of their care placements.

Over a third of care-experienced participants (n=19) reported their first justice system contact occurred whilst in care. Of these, 11 were in children's homes at the time of this contact, and over-criminalisation for minor offences in children's homes was a common theme. An escalation in offence seriousness was a feature of many women's lives. For some, offending behaviour worsened after the 'cliff edge' of leaving care.

Disrupted education was common; 34 participants reporting leaving mainstream school early, although five were studying at college or university at the time of interview. It was clear that movement and instability in care could have an impact in different ways, affecting girls and women across the life course.

The Challenges Facing Care-Experienced Girls and Women in the Youth and Criminal Justice Systems

Numerous challenges face care-experienced girls and women in conflict with the law, with participants often disadvantaged by negative gendered judgements. These could combine with racial discrimination and be reinforced by an over-reliance by professionals on official files.

Despite progress made in recent years in increasing awareness of unnecessary criminalisation in care, participants across all groups were clear that it often continued. Reducing police involvement in care settings requires a greater understanding of the challenges facing care staff and the need to improve staff training and support and raise the status of the sector.

The link between unmet mental health needs in care and subsequent criminalisation was stark, and there is a need to dramatically improve mental health support in the community to prevent prison continuing to be the default option in the future. The prevalence of self-harm and suicide attempts among participants testifies to the importance of getting this right.

In addition to the above issues, participants described some shocking accounts of victimisation or exploitation being ignored in care, and the impact of abuse experienced within care was long-lasting.

Preventing Criminalisation, Promoting Diversion and Desistance

Thirty-six local protocols from across England and Wales were obtained for analysis. These protocols were aimed at preventing unnecessary criminalisation of children in care and/or supporting those already in contact with the justice system. If such protocols are followed they clearly have the potential to divert children away from formal youth justice contact. However, many protocols took a 'one size fits all' approach; only six mentioned gender, with just two of these recognising that girls in care are at particular risk of criminalisation. There was also a concerning absence of information about ethnicity. Moreover, both the normalisation of police involvement in some care settings and the emphasis on record-keeping can have unintended consequences. The lack of training and resources to embed protocols into practice is especially problematic.

Interviews with professionals highlighted a commitment to diverting children from the youth justice system, and a recognition that this needed to involve far more than just avoiding prosecution. Furthermore, there is overwhelming evidence that care-experienced girls and women should be diverted from custodial sentences wherever possible.

There also needs to be far greater recognition of the profound impact of imprisonment across the generations, particularly on care-experienced mothers. However, the importance of supporting those with care experience already in custody must not be neglected. Developing the role of prison leads with special responsibilities for girls and women with care experience could be a key way to improve support, but there are various barriers to making progress.

Care-experienced girls and women reported that trusted relationships were key for providing and receiving support. Promoting such relationships requires going beyond the basics of providing accommodation, to being trauma responsive, supporting staff and raising aspirations.

Conclusion and Recommendations

Overall, this study clearly reveals that care-experienced girls and women in trouble may be subject to damaging cycles of excessive surveillance and inadequate support at different points across the life course – the former occurring in relation to criminalisation and the latter in relation to victimisation, leaving care support and imprisonment. Furthermore, the experiences of those who became mothers highlights how excessive scrutiny may begin again when care-experienced girls and women become parents themselves.

Addressing these damaging cycles could help to disrupt the routes between care and custody. However, we also need to recognise the wider social context in which these cycles take place.

The decimation of early help under a succession of austerity-focused governments (Block et al., 2020), and the devastating impact of this on child poverty and inequality are making life increasingly difficult for many families. At the same time, our systems of welfare and support are severely under-resourced, and vulnerable children may be removed from so-called 'struggling families' into a struggling care system that cannot adequately address welfare needs and, in the worst cases, may perpetuate further harm. Moving forwards within this context is not easy but change needs to happen.

Recommendations

Listening to care-experienced girls and women

Listening to the voices of those with lived experience must be a key focus for change for all carers, care staff and other front-line practitioners working directly with care-experienced girls and women. We need to move beyond tokenistic consultation. Girls and women in our study wanted to be listened to without judgement, treated with care and respect, have their views taken seriously and to be believed. This recommendation is a pre-requisite that should underpin all the recommendations that follow.

Building a trauma-responsive care system that does not perpetuate further harm

The Department for Education (DfE) must create a care system that not only recognises, but can also adequately respond to, pre-care trauma, whether that be loss, grief, victimisation and/or experiences of violence. Building a care system that can address past trauma, and crucially does not perpetuate further harm, should be an absolute priority given the reasons for individuals entering care in the first place.

Providing meaningful and timely mental health support

The Department of Health and Social Care (DHSC) and the DfE must work in partnership to ensure local authorities have timely access to sufficient specific specialist provision for girls in care with acute mental health needs. Moreover, prisons should work closely with community mental health teams to ensure that women in prison have access to timely professional support that continues when they leave the prison gates. The prevalence of self-harm and suicide attempts among care-experienced interviewees demonstrates that for some this is a matter of life and death.

Addressing the link between stigma and violence against care-experienced women and girls

The government's strategy on Violence against Women and Girls should recognise care-experienced girls and women as a distinct group in need of support, not least because of the overwhelming evidence that their victimisation may be minimised or ignored. In particular, those who come into conflict with the law may experience negative gendered and racialised judgements and not fit neatly with societal views of the 'ideal victim'.

Developing protocols aimed at preventing criminalisation in care

We call on local authorities, including Directors of Children's Services and Chief Constables, to renew their commitment to local protocols aimed at preventing unnecessary criminalisation of children in care. These should be accompanied by ongoing training for staff in care settings and police with a particular focus on: intersectional approaches which recognise the distinct needs of girls and those from minoritised backgrounds; the frequent blurring of the boundaries between victimisation and criminalisation; and the potentially life-long impacts of criminal records.

Where such protocols do not yet exist, local authorities must commit to them as a matter of priority. In this regard, the DfE, Home Office and Ministry of Justice should lead the way by placing a statutory duty on local authorities to prevent unnecessary criminalisation of children in care.

Recognising the limits of official files and moving beyond them

The requirement to record information within care settings could lead to a thick file of ‘incidents’ for a child that would simply not be recorded for those in non-care settings. Care-experienced girls and women felt strongly that carers and social workers should avoid over-reliance on their official files and take time to get to know and understand them. This is vital if we are to avoid the problem of challenging behaviour being decontextualised.

Promoting trusted and consistent relationships

Promoting trusted, caring and consistent relationships for those with care experience in trouble is vitally important. The government needs to improve support for those who support others and ensure sufficient workload space for professionals to get to know girls and women. Accessible and appropriately resourced support services need to be available in the community. Girls should not have to be involved with the youth justice system to benefit from support and women should not have to enter prison to feel safe.

Joining up disjointed court systems

The challenges of having cross-jurisdictional conversations and sharing information across court systems may be a particular issue in cases involving care-experienced girls and women and may mean that crucial contextual information is missing in criminal cases in particular. Joining up our disjointed court systems by enhancing communication and information-sharing across courts, including developing joint training through the Judicial College, could begin to improve this. However, we further support recent calls for consideration of a more fundamental restructuring of the courts in the long-term.

Diverting girls and women from custody wherever possible

Our findings strongly reinforce messages from wider research that women must be diverted from custody into community alternatives wherever possible. The immense harm that can come from imprisonment is starkly highlighted by the prevalence of self-harm and suicide amongst women in prison. Prison must cease to be used as a default option when the lack of support in care and the community essentially helps to reproduce the well-trodden routes between care and custody.

Improving support for those already in custody

A commitment to diversion from custody is not incompatible with a commitment to improving support for care-experienced girls and women already in prison. The development of an HMPPS agenda to support care-experienced people in custody offers some hope, but to make this work count, care-experienced leads in prison must be provided with the resources and workload space required to make a difference. Committing resources to a workstream that explores the specific support needs of care-experienced women in prison should be a key part of this endeavour.

Confronting the intergenerational harms caused by imprisoning care-experienced mothers

The government needs to confront the intergenerational harms of imprisonment and particularly, how maternal incarceration can lead some children into care. Sentencers must take account of the potential impact on children of imprisoning mothers. The impact of custodial sentences is particularly important to consider for care-experienced mothers who may not have wider networks of family support upon which they and their children can depend. There also must be recognition of the understandable fear that some imprisoned mothers may have of revealing information about their own children if they themselves have had a very poor care experience. These issues must be addressed with the utmost care and sensitivity.

Challenging stigma and raising aspirations

Both care-experienced and professional participants wanted a care system that went beyond the basics. 'Care' needs to be so much more than just providing accommodation, and we must raise aspirations of both our systems and the individuals within them. Raising the status of the sector requires investment in staff and appropriate placements, including ongoing training and support for carers and other professionals. Raising aspirations of systems and individuals is also about challenging the stigma attached to care experience, moving beyond negative gendered and racialised judgements, and questioning any assumed inevitability of the link between care and justice system involvement.

Imagining alternative systems

Finally, at least some of the challenges raised in this report could be addressed by more radical change that involves imagining alternative systems of care and justice. Raising the minimum age of criminal responsibility in England and Wales so that it is no longer one of the lowest ages in Western Europe would prevent younger children being unnecessarily criminalised in care. Furthermore, extending the age at which meaningful leaving care support is available could help to ease the compressed and accelerated transitions to independence faced by too many, and reduce the numbers currently caught up in the criminal justice system who are abandoned by their local authorities.

In conclusion, systemic failings in the wider society help to reproduce the routes between care and custody over time. Yet there are many different ways of doing 'care' and 'justice'. Change is possible – if we care enough to make it happen.

References

- Block, K., Featherstone, B. & Howes, S. (2020) The Safety Net is Gone: Understanding The Impact of Child Poverty on the Lives of Children and Families in England: A Survey of Social Workers. Child Poverty Action Group. Available at: <https://cpag.org.uk/sites/default/files/files/policypost/The-safety-net-is-gone.pdf>
- Burman, M. & Gelsthorpe, L. (2017) Feminist criminology: inequalities, powerlessness and justice. In: Liebling, A., Maruna, S. and McAra, L. (eds) The Oxford Handbook of Criminology, 6th edition. Oxford: Oxford University Press, pp.213–238.
- Coyne, D. (2015) Effectively Abandoned: Care Leavers in the Criminal Justice System. Lessons From a Regional Pilot Project. Manchester: The Care Leavers' Association. Available at: <https://www.careleaveroffer.co.uk/documents/1656-effectively-abandoned-care-leavers-in-the-criminal-justice-system.pdf>
- Fitzpatrick, C. & Williams, P. (2017) The neglected needs of care leavers in the criminal justice system: Practitioners' perspectives and the persistence of problem (corporate) parenting. *Criminology & Criminal Justice*, 17(2): 175–191.
- Lammy, D. (2017) An Independent Review into the Treatment of, and Outcomes for, Black, Asian and Minority Ethnic Individuals in the Criminal Justice System. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf
- Prison Reform Trust (2016) In Care, Out Of Trouble: An Independent Review Chaired by Lord Laming (Laming Review). Prison Reform Trust. Available at: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/In%20care%20out%20of%20trouble%20summary.pdf>
- Staines, J. (2016) Risk, Adverse Influence and Criminalisation: Understanding the Over-Representation of Looked After Children in the Youth Justice System. Prison Reform Trust. Available at: http://www.prisonreformtrust.org.uk/Portals/0/Documents/risk_adverse_influence_criminalisation_lit_review_lo.pdf
- Woolf, N.H. & Silver, C. (2018) Qualitative Analysis Using NVivo: The Five Level QDA Method. London: Routledge.